IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 24211 of 2007(S)
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OP.372/2006 of FAMILY COURT, MALAPPURAM
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PETITIONER:
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RESMY, AGED 29 YEARS,
D/O SUNNY, VELLIMOOZHIYIL HOUSE, ERUMBAKACHOLA PO,
PALAKKAYAM VILLAGE, MANNARKKAD TALUK,
PALAKKAD DIST.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

RESPONDENTS:
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SHAJI JOSEPH,
AGED 36 YEARS, S/O JOSEPH,
MADUKKAKUZHIYIL HOUSE, PANTHALLOOR DESOM,
KADAMBODE P.O., MALAPPURAM DIST.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 24211 of 2007(S) APPENDIX

PETITIONER'S EXHIBITS

Ext.P1: True copy of order in O.P No. 372/2006 dated 25.9.2006 of the Family Court Malappuram

Ext.P2:True copy of order dated 27.04.2007 in O.P No. 372 /2006 of the Family Court Malappuram .

//True copy//

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**KURIAN JOSEPH & HARUN-UL-RASHID, JJ.**

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**W.P.(C) No. 24211 of 2007**

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**Dated this the 10th day of October 2007**

**JUDGMENT**

**Harun-Ul-Rashid,J**

The petitioner herein is the respondent in O.P No. 372/2006 on the file of the Family Court Malappuram,filed for restitution of conjugal rights. The petitioner alleged in the writ petition that when the matter came up for hearing before the Family Court on 29-8-2006 she did not entered appearance. On that day the petitioner had engaged an advocate and sought time for appearance. So the Family Court adjourned the case to 22-09-2006. On 22-09-2006 the petitioner did not attend the court, but sought for adjournment. However the petitioner was called absent and set exparte and order for restitution of conjugal rights was passed on 25-09-2006. The court below examined the facts in support of the petition for setting aside the exparte order and found that the explanation for her absence is without any justifiable reasons. At the same time the Family Court passed the impugned order showing some leniency towards her by setting aside the exparte order on condition that the petitioner shall pay a cost of Rs. 5,000/- to the opposite side.

We had gone though the averments of the writ petition and the supporting documents. After hearing the counsel for the petitioner we

are of the view that the condition i.e the imposition of payment of Rs. 5,000/- is not just and proper in the circumstances. It is seen that the petitioner was prevented by justifiable reasons from appearing before the Family Court on the respective dates. Therefore we accept the reasons stated in the writ petition and set aside Ext.P2 order to the extent of lifting the condition regarding payment. The Family Court is directed to dispose of the matter on merits as expeditiously as possible

**KURIAN JOSEPH, JUDGE**

**HARUN-UL-RASHID,JUDGE**

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